Supreme Court, U.S.
FILED

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No.

In The

Supreme Court of the United States

October Term, 2003

Aaron Raiser,
Petitioner,

v.

United States of America
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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Petition for Writ of Certiorari

Aaron Raiser, Pro Se
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28 pp

Questions Presented for Review

1. Is the "due process of law" guarantee of the Constitution being fulfilled if 1 out of 7 persons on death row have come too close to being put to death and then exonerated, as has been the case in the recent past.

2. Should not the government, state and federal, put into place safeguards, which are based on the reasons that 1 out of 7 ended up on death row incorrectly, so that due process of law can be ensured.

3. Is there a Constitutional basis for someone other than the wrongly executed to bring suit to redress an injury to them resulting from a wrongful execution.

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Appendix A - United States Court of Appeals for the Tenth Circuit affirming the Order of dismissal of the district court.

Appendix B - United States District Court For The District of Utah Order dismissing petitioners case

Appendix C - Federal Death Sentence - 18 U.S.C. CHAPTER 228

OPINIONS BELOW

On June 21, 2002 the District Court entered an Order dismissing petitioners case. (Appendix B).

On November 25, 2002 the Tenth Circuit Court of Appeals entered an unpublished Order affirming dismissal. (Appendix A).

JURISDICTIONAL STATEMENT

The date the order and judgment was entered by the Court of Appeals for he Tenth Circuit was 27 November, 2002.

This Court's jurisdiction to review, on a writ of certiorari, the decision of the United States Court of Appeals for the Tenth Circuit affirming the ORDER of dismissal of the district court is conferred by 28 U.S.C. § 1254.

Petitioner certifies that copies of this Writ were mailed to: Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N. W., Washington, DC 20530-0001.

Constitutional Provisions

U.S. Constitution Amend. I -

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Constitution Amend. V -

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Constitution Amend. XIV Section. 1 -

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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Statement of the Case

This is a civil rights case arising out of both the federal and state government's indifference - not implementing appropriate safeguards - to the risk of putting to death an innocent person convicted of a capital crime.

Petitioner has written and corresponded with at least 10 death row inmates all of which, based on the inherent unreliability of the evidence producing conviction, may be innocent of the capital crime for which they received sentence of death.

Petitioner has subsequently desired, along with these death row inmates, to peaceably assemble under the First Amendment regarding issues of national and government concern.

Petitioner subsequently filed a complaint in federal court, alleging that putting to death of an innocent person would indeed injure the Petitioner as, among other things, this would be a government action to deny the right to peaceably assemble once one of those 10 if were found innocent of their convicted crime after being executed - which at the current rate of exoneration is likely to occur to at least one of those.

Petitioner also maintains that he has taxpayer standing which applies to cases in which a federal taxpayer challenges a congressional appropriation regarding the death penalty made pursuant to Article I, Section 8 that allegedly violates the Establishment Clause of the First Amendment.

Petitioner also maintained that as a citizen of a "we the people" government, he is in part responsible for any death of an innocent person on death row and would have standing as such.

The district court dismissed case and stated as basis that plaintiff was not injured by an innocent person being put to death.

The court of appeals for the Tenth Circuit affirmed.

Argument - Reasons for Granting the Writ

I.
Due process of law is not being fulfilled in the current death penalty system where 1 out of 7 are wrongly convicted.

Credible sources estimate that 102 death row inmates have been exonerated since 1972. This is a rate of 1 exoneration per 7 actual executions. This should be troubling to a society that places great emphasis on the sanctity and freedom of human life.

While no scholarly articles exist for 1985 - present, one report puts at 23 the number of wrongful executions from 1900 to 1984. (See Miscarriages of Justice in Potentially Capital Cases", Hugo Adam Bedau and Michael L. Radelet, Stanford Law Review November 1987.)

II.
We need to learn from past mistakes and use the information gained to make changes to minimize or eliminate the risk of innocent fellow citizens being wrongly executed.

Learning the reasons why these 102 death row inmates were wrongly convicted, insight can be gained as to what kind of evidence has higher probative inaccuracy - a pattern of inherent lack of accuracy and reliability that is critical in any death penalty sentence handed down.

When this court intervened in *Furman v. Georgia* in 1973 and again in *Gregg v. Georgia* in 1976 we had every reason to believe due process of law would be carried out and that those receiving a punishment of death for a capital crime would be proven guilty beyond reasonable doubt and the verdict and sentence would be reliable.

If we the people, however, proceed with a death penalty system aware that is a possible mistake rate of 1 out of 7 then we become culpable in the death of any person executed incorrectly if we fail to take common sense steps to ensure that each person on death row has a greater certainty of guilt than what is currently in place.

At sentencing and *after* jury deliberation as to whether impose a penalty of death, if the defendant is given a sentence of the death by the jury, then if the evidence falls into certain categories which are inherently unreliable, which produced the 102 wrongful convictions, then the defendant would receive life without parole.

Of those 102, approximately 50% were convicted where the sole evidence, or central evidence was that of eyewitness testimony; the remaining are resulting from testimony by someone receiving something in return for their testimony such as an accomplice, jail-house "informants", or others receiving a reduced sentence by the prosecutor etc or rewards; faulty or perjured forensic testimony; forced confession; prosecutorial misconduct such as not turning over critical evidence and incompetence/lack of diligence on the part of counsel.

When the death penalty was "re-instated" under *Gregg v. Georgia* in 1976 allowing death penalty executions to proceed, we have learned that the procedural safeguards are insufficient. We have also, to a significant degree, learned some of the reasons why those persons were wrongly convicted. An understanding that we did not or could not have had in 1976.

If an automobile manufacturer designed a car and then later learned that a design mistake unforeseen at the time of design caused 1 out of 7 owners to die, they would figure out what the problem was and fix the design flaw to

make the car safe or they wouldn't be in business very long.

The same common sense changes need to be made with respect to the death penalty system in this county. We can learn from the 102 cases that were wrongly decided and gain insight into what went wrong: insights that we did not have in 1976 and earlier.

III.
A greater loss of liberty, a greater burden of proof

This court places great interest and priority on death penalty cases.

Capital punishment cases deserve a higher degree of care - a greater degree of certainty.

The saying, first attributed to Blackstone, that "it is better for ten guilty men to go free than for one innocent to suffer" has application to the death penalty and the following holds true:

It is better to sentence 10 people convicted of a capital crime and found worthy of death to life without parole than to put to death an innocent person.

This is justifiable and reasonable. In capital cases where human life is at stake a higher degree of evidentiary proof needs to exist than in ordinary felony cases - not at deliberation and arriving at a verdict - at sentencing.

As to not disrupt the current procedure in capital cases, at sentencing, if the jury decides a punishment of death, then an examination of the evidence is made. If the evidence does not meet certain criteria for reliability, then the conviction still stands and a sentence of life without parole is given. Capital cases need to be treated in a special manner like this as the punishment is unique and final. This also makes sense.

Evidentiary standards in capital cases where the death penalty is sought needs to be distinguished from standard felony cases at the sentencing phase of trial due to the severity and finality of the punishment imposed.

If the death penalty system is to be reliable, it needs to rely on evidence which is reliable. The trial procedures in arriving at a verdict remain unchanged. If the jury, however, returns a sentence of death, then the evidence is examined for reliability. Evidence that does not meet certain standards or has a track record of unreliability would disallow a sentence of death.

IV.
Evidence Standards/Safeguards to minimize risk of wrongly executing innocent persons.

1. Eyewitness testimony

Of the 102 exonerated approximately 50 % were convicted relying on faulty eyewitness testimony where that testimony was central or the sole evidence supporting conviction.

The first proposed standard would be the following: At sentencing, where the jury decides upon the death penalty, if eyewitness testimony is the only evidence or the determitive factor in conviction then the person found guilty shall be sentenced to life imprisonment without parole, unless that witness was someone well-known to the defendant. This would include family members, friends and witnesses who otherwise have had enough time to become completely familiar (hours/days) with the defendant. Such testimony, where the witness is not a family member or close friend etc., that convicts a defendant, can be the basis for conviction as currently is in place; *at sentencing* such a case would be ineligible for the death penalty.

2. Witness receiving something in return for their testimony

If the jury finds defendant worthy of death penalty after deliberating, then if any witness received anything in return for their testimony then defendant automatically gets life without parole. This eliminates the unreliable jailhouse informant or co-defendant that gets a reduced sentence or freedom for their testimony or the street informant that receives a reward for their testimony. History has shown these to be unreliable. This where the evidence received from such a witness is the sole or central part of defendants conviction or where it combines with one of the other unreliable forms of evidence outlined herein.

3. Prosecutor(s) sign and certifies any and all evidence is turned over

A slight percentage of those exonerated were withheld evidence from the prosecutor either negligently or purposefully. In any capital case where the death penalty is sought the prosecutor(s) are required to sign a certification to the court that any and all evidence is turned over to the

court/defendant or face either fine or imprisonment. This should provide a motivation that sadly history has shown that some need. This should inspire the prosecutor to be both diligent and honest in the matter. Absent this standard being in place, no death penalty can be imposed.

4. Forced Confessions

Any testimony that is used of confession shall be videotaped where possible or at least audiotaped. However inconvenient or added expense there have been a few cases where confessions have been coerced. In fact some pardons of the Illinios inmates recently were done so due to known misconduct in forcing confession. Where human life is at stake it has to be done.

5. Mandatory Forensic testing by the defense

This has been a problem in a number of cases including a number of Oklahoma's death row cases where there the forensic evidence that convicted the person was falsified or unreliable. No testing was done by the defense either out of lack of money or interest or laziness. The defense counsel would be mandated as a matter of law to procure the experts to test any such evidence introduced at trial. Absent such testing where possible, no death penalty can be sought.

Estimates are that only 18% of all capital cases *receiving the penalty of death* would be affected. This is a small price to pay.

We can not wait for some "perfect fix" that is hoped to exist. The current proposed safeguards outlined above are not proclaimed to be all encompasing. These may need refining. Others may be needed. We must, however, begin somewhere and act soon as at some point in time innocent human life may be at stake.

V.
Injury-in-fact to Petitioner

That "due process of law" is not being adequately carried out is outlined above and a 1 out of 7 success rate speaks for itself. That the injury can extend to those other than the person executed incorrectly and that petitioner has standing in the instant case is set forth.

Petitioner maintains 7 separate grounds for this case to be heard.

Petitioner's basis for standing is not too attenuated from this courts holdings in *Duke Power Co. v. Carolina Environmental Study Group* 438 U.S. 59 (1978) and *United States v. SCRAP*, 412 U.S. 669 (1974).

1. The framers of the constitution made us dependent on others for certain rights. One of those rights is the right to peaceably assemble with ones fellow citizens. This extends to those convicted, sentenced to death and then later exonerated; once they are free they should have the right to peaceably assemble regarding issues of national government, for redress of grievances, or for anything else conected with the powers or the duties of National Government. Their fellow Americans also deserve the right to so assemble with them. If one of them is executed wrongly then that right is lost to both them and their fellow citizen and in this case including petitioner.

The right to peaceably assemble was first before this Court in 1876 in *United States v. Cruikshank* 92 U.S. 542 (1876). There

> "The right of the people peaceably to assemble for the purpose of petitioning Congress for a redress of grievances, or for anything else connected on the

part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances."

Cases after *United States v. Cruikshank* tend to merge the rights of assembly and petition into the speech and press clauses, and, indeed, all four rights are likely considered as elements of an inclusive right to freedom of expression. See *Bridges v. California*, 314 U.S. 252 (1941); *De Jonge v. Oregon*, 299 U.S. 353 (1937); *Eastern R.R. Presidents Conference v. Noerr Motor Freight*, 365 U.S. 127 (1961).

In *Hague v. CIO* 307 U.S. 496 (1939) the court included aliens as entitled to the right to assembly.

In the current system of 1 out of 7 incorrectly on death row (1972 - present so far) then it is inevitable that an innocent person is going to die. If that occurs, the right to peaceably assemble with that person is lost and society, and specifically in this case, petitioner is harmed. What makes government all the more culpable is that it is aware of the problem and takes no action to correct to problem. To have some abstract hope that an innocent person isn't going to die defies reasonableness - that the system somehow magically works - that the 102 somehow made it then everyone shall.

Many of the 102 that were exonerated were spared due to luck and interest of others not even related to their case. For example one Illinois inmate was hours from execution and received a reprieve from the governor for a competency exam, at which point a Northwestern University Journalism class decided to investigate the case after serious doubt arose over the inmates guilt. That class went on to prove his innocence and won his release. This is absolutely not what the framers of the constitution meant by "due process of law." We owe it to eachother to ensure a

more reliable system. A reliable system can not rely on evidence with a track record of being unreliable when it comes to sentencing someone to death.

Although there is much debate regarding the death penalty, it has been said that mistakes are going to happen and that is just a fact of it. Although the problem and solutions are perhaps complex, it is not reason for lowered expectation on the part of society as some seem to have; it is reason for higher degree of care with respect to implementing the death penalty.

This court held in *Friends of the Earth v. Laidlaw environmental services* 528 U.S. 167 (2000):

"The relevant showing for purposes of Article III standing, however, is not injury to the environment but injury to the plaintiff."

In the case at bar it is not the relevant showing for purposes of Article III standing is not injury to the person on death row executed innocently but injury to the plaintiff that results from that wrongful death as set forth herein.

Petitioner maintains that the right peaceably to assemble as guaranteed by the can be narrowly applied to allow standing in the present case.

This is reasonable as the framers of the constitution make us interdependent for certain rights.

2. Constitutional Jus Tertii applies to the case at bar.

(i) The presence of some substantial relationship between the petitioner/claimant, and the third parties does exist in the current case. *See e.g. Eisenstadt v. Baird*, 405 U.S. 438, 445 (1972); *Griswold v. Connecticut*, 381 U.S. 479, 481 (1965); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 458-59 (1958).

(ii) The impossibility (insurmountable difficulty) of the third party rightholders asserting their own constitutional rights does exist; *See* cases cited in (i) above; *see also BantamBooks, Inc. v. Sullivan*, 372 U.S. 58, 65 (1963).

(iii) The risk that the rights of third parties will be diluted unless the party in court is allowed to assert their rights does exist. See cases cited in (i) above; *Barrows v. Jackson* 346 U.S. 249 (1953). (i - iii adapted from "Standing to assert Constitutional Jus Tertii", 88 Harvard L.Rev 423 (1978)).

3. Federal taxpayer suits allowed "when a taxpayer attacks a federal statute on the ground that it violates the Establishment and Free Exercise Clauses of the First Amendment." See *Flast v. Cohen*, 392 U.S. 83 (1968).

Congress' appropriation of funds for the federal death penalty that is broken and congress is aware it is broken and does nothing about it offends principles at the heart of religion - the sanctity of life.

4. A somewhat perhaps underemphasized part of the death penalty system is that as a we the people government each American (of voting age) is in part responsible for the death of an innocent person. The blame can not be shifted to anyone else or other part of government.

Petitioner maintains he is in part guilty as a citizen for any such wrongful execution. Simply because petitioner

is perhaps more alert or caring than the average citizen does not mean he should be deemed not to have standing simply because no one else is pained by a wrongful execution.

5. Unnecessary risk petitioner could end up on death row for a crime not committed.

6. The purpose of standing is to assure the best conditions of informed adjudication; the "gist of the question of standing," the Court said in *Baker v. Carr* is whether the litigant alleges "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions". Petitioner maintains he has such a personal stake in the outcome.

7. The "Capable of repetition, yet evading review" exception stems from *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 496 (1911). See also the honorable Chief Justice Rehnquist's concurring opinion in *Honig v. Doe*, 484 U.S. 305. Worth noting also is Justices Brennan, Douglas, White and Marshall's dissent in *DeFunis v. Odegaard* 438 U.S. 265 maintaining dismissal disserved the public interest, since the issues "must inevitably return to the federal courts and ultimately again to this Court."

CONCLUSION

The current system is not living up to the "due process of law" guarantee and needs certain changes at sentencing to make it safer. The harm extends beyond those that receive the death penalty innocently.

This case asks the court to implement a safer system for the death penalty.

It seeks a system where it is better to sentence 10 people convicted of a capital crime to life without parole than to put to death an innocent person.

A reliable system can not rely on evidence with a track record of being unreliable when it comes to sentencing someone to death.

It asks for workable evidentiary standards/safeguards to be put into place at sentencing where the evidence is sufficient for a guilty verdict yet not reliable of a sentence of death - and in so doing the injury to petitioner shall be redressed.

Respectfully submitted,

_____

Aaron Raiser

Appendix A - Tenth Circuit Order Upholding dismissal

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

AARON RAISER,
Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA,
Defendant - Appellee.

No. 02-4109
D.C. No. 01-CV-916-K
(D. Utah)

ORDER AND JUDGMENT(*)

Before SEYMOUR, HENRY, and BRISCOE, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Plaintiff Aaron Raiser appeals the district court's dismissal of his complaint for lack of jurisdiction. The district court concluded Raiser lacked standing. We exercise jurisdiction pursuant to 28 U.S.C. § 1291 and affirm.

Appendix A

Raiser, a Utah resident without any apparent connection to the criminal justice system, filed this suit seeking nominal damages of $1 and to have the district court retroactively require state and federal governments to administer the death penalty only in a manner consistent with his proposed standards. As a taxpayer, Raiser contends the failure of the United States to follow his standards will deprive him of the right to assemble with prisoners who eventually may be released due to their actual innocence.

We review the district court's judgment that it lacked subject matter jurisdiction de novo. See *U.S. West Inc. v. Tristani*, 182 F.3d 1202, 1206 (10th Cir. 1999). Before we can consider the merits of his complaint, Raiser must establish that this court has subject matter jurisdiction under Article III of the United States Constitution. See *Schaffer v. Clinton*, 240 F.3d 878, 883 (10th Cir. 2001). Article III provides a limited grant of authority for federal courts to hear "cases" and "controversies." See *Allen v. Wright*, 468 U.S. 737, 750 (1984). One of the most important doctrines within this requirement is that the litigant have "standing," a doctrine that focuses upon whether a particular litigant is entitled to have a federal court decide the merits of the particular dispute. See id. at 750-51.

We agree with the district court that Raiser lacks standing. Raiser's status as a taxpayer who has religious objections to the death penalty does not confer standing. See *Colorado Taxpayers Union, Inc. v. Romer*, 963 F.2d 1394, 1399 (10th Cir. 1992) (stating *Flast v. Cohen*, 392 U.S. 83 (1968), and its narrow exception to the general prohibition of taxpayer standing "applies only to cases in which a federal taxpayer challenges a congressional appropriation made pursuant to Article I, Section 8 that allegedly violates the Establishment Clause of the First Amendment"). Similarly, his assertion

that the execution of death row inmates would deprive him of the right to associate with them if they ultimately are found to be innocent and released is entirely too speculative to form a live controversy. See *Whitmore v. Arkansas*, 495 U.S. 149, 159-61 (1990) (finding the potential of habeas relief too attenuated to confer standing). Raiser is one citizen, of perhaps many, who opposes the death penalty for various philosophical and/or religious reasons. This type of generalized grievance, without any imminent tangible harm, cannot confer standing. See *Chrisman v. Comm'r*, 82 F.3d 371, 373 (10th Cir. 1996). Finally, Raiser has not satisfied the standards required for third-party standing. See *Terrell v. INS*, 157 F.3d 806, 809 (10th Cir. 1998) (noting third-party standing requires injury in fact, close relation to the third party, and a showing the third party is unable to pursue his or her own claims).

AFFIRMED.

Entered for the Court

s/_____
Mary Beck Briscoe
Circuit Judge

Appendix B - District Court's Order dismissing case

In The United States District Court For The District of UtahCentral Division

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AARON RAISER, Plaintiff,	:	
	:	No. 2-01-CV-916-K
v.	:	
UNITED STATES OF AMERICA, Defendant.	:	ORDER
	:	

Plaintiff, Aaron Raiser, filed the instant action against the United States challenging the death penalty imposed in the United States under federal and state law. The defendant, United States, has moved to dismiss the action on the grounds of lack of jurisdiction.

Plaintiff is not under sentence of death and has no standing to maintain the action on behalf of anyone else. *Whitmore v. Arkansas* 495 U.S. 149 (1990); see *Demosthenses et al v. Ball et al.* 495 U.S. 731;*Sanchez-Velasco v. Secretary of Dept. of Corrections* 287 F.3d 1015 (11th cir. 2002).

Appendix B

Article III § 2 Constitution of the United States confines federal court jurisdiction to actual "cases" and "controversies". There is no case or controversy in plaintiff's claim. Where plaintiff is not affected, any ruling by this court would be advisory and prohibited by Article III § 2. *Muskrat v. United States* 219 U.S. 346.

Congress has not conferred jurisdiction on this Court to entertain the action brought by plaintiff. The United States is correct in its contention that this Court is without jurisdiction over plaintiff's complaint. Therefore,

IT IS HEREBY ORDERED the motion of defendant to dismiss the plaintiff's complaint, based on lack of jurisdiction, is Granted and plaintiff complaint is Dismissed.

DATED this 21st day of June, 2002.

BY THE COURT:

s/_____
Dale Kimball, Judge
United States District Court

Appendix C - Federal Death Sentence
18 U.S.C. CHAPTER 228

Sec. 3591. - Sentence of death

(a) A defendant who has been found guilty of -

(1) an offense described in section 794 or section 2381; or

(2) any other offense for which a sentence of death is provided, if the defendant, as determined beyond a reasonable doubt at the hearing under section 3593 -

(A) intentionally killed the victim;

(B) intentionally inflicted serious bodily injury that resulted in the death of the victim;

(C) intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the act; or

(D) intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act, shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified, except that no person may be sentenced to death who was less than 18 years of age at the time of the offense.

Appendix C

(b) A defendant who has been found guilty of -

(1) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under the conditions described in subsection (b) of that section which involved not less than twice the quantity of controlled substance described in subsection (b)(2)(A) or twice the gross receipts described in subsection (b)(2)(B); or

(2) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under that section, where the defendant is a principal administrator, organizer, or leader of such an enterprise, and the defendant, in order to obstruct the investigation or prosecution of the enterprise or an offense involved in the enterprise, attempts to kill or knowingly directs, advises, authorizes, or assists another to attempt to kill any public officer, juror, witness, or members of the family or household of such a person,

shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified, except that no person may be sentenced to death who was less than 18 years of age at the time of the offense